

CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

GENERAL PROVISIONS: LABOR-HOUR/TIME-AND-MATERIAL CONTRACT

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GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

- Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities, Form JPL 1725
- Release of Information, Form JPL 1737
- Affiliate Access Report, Form JPL 1943
- Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Certifications, Form JPL 2892
- Asbestos Notification, Form JPL 2895

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-36 - 4/84]

(This Article applies to contracts over \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-35 - 4/98]

(This Article applies to contracts over \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

ANTI-KICKBACK PROCEDURES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-7 – 7/95]

(a) Definitions.

- (1) "Kickback," as used in this Article, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
- (2) "Person," as used in this Article, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
- (3) "Prime contract," as used in this Article, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
- (4) "Prime Contractor," as used in this Article, means a person who has entered into a prime contract with the United States.
- (5) "Prime Contractor employee," as used in this Article, means any officer, partner, employee, or agent of a prime contractor.
- (6) "Subcontract," as used in this Article, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
- (7) "Subcontractor," as used in this Article, (i) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (ii) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher-tier subcontractor.
- (8) "Subcontractor employee," as used in this Article, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from:

- (1) Providing or attempting to provide or offering to provide any kickback;
- (2) Soliciting, accepting, or attempting to accept any kickback; or
- (3) Including, directly or indirectly, the amount of any kickback in the Contract price charged by a prime Contractor to the United States or in the Contract price charged by a subcontractor to a prime contractor or higher-tier subcontractor.

(c) (1) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this Article may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

- (2) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this Article.

- (3) The Institute may (i) offset the amount of the kickback against any monies owed under the Contract and/or (ii) direct that the Contractor withhold, from sums owed a subcontractor under the Contract, the amount of any kickback. JPL may order that monies withheld under subdivision (c)(3)(ii) of this Article be paid over to JPL unless JPL has already offset those monies under subdivision (c)(3)(i) of this Article. In either case, the Contractor shall notify JPL when the monies are withheld.
- (4) The Contractor agrees to incorporate the substance of this Article, including this subparagraph (c)(4), in all subcontracts under this Contract.

ASBESTOS NOTIFICATION [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 2/00]

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena buildings. Work performed outside the United States is exempt from the requirements of this Article.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.232-23(a) – 1/86]

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
 - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
 - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
 - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
 - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this Contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
 - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
 - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Contractor is prohibited, without prior written JPL consent, from delegating any part of the duties required of it by this Contract; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts." Delegation of duties without such consent is void.

(This provision is not applicable for procurements of \$100,000 or less, for commercial items, or for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.)

- (a) As used in this Article, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) Examination of Costs. If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable Contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this Contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract.
- (c) Cost or Pricing Data. If the Contractor has been required to submit cost or pricing data in connection with pricing action relating to this Contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to:
 - (1) The proposal for the Contract, subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the Contract, subcontract, or modification; or
 - (4) Performance of the Contract, subcontract, or modification.
- (d) Comptroller General.
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this Contract or a subcontract hereunder.
 - (2) This paragraph (d) may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports. If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (ii) the data reported.
- (f) Availability. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this Article, for examination, audit, or reproduction, until three years after final payment under this Contract, or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of FAR, and any corresponding implementing or supplementing provisions in the NFS, or for any longer period required by statute or by other Articles of this Contract. In addition:
 - (1) If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for three years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause of the Government Prime Contract, or if this Contract contains a "Disputes" Article, to appeals under such Article, or to litigation or the settlement of claims arising under or relating to this Contract, shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) (1) The Contractor shall insert all of the provisions of this Article, including this paragraph (g), in all subcontracts under this Contract that exceed \$100,000, and:

- (A) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (B) For which cost or pricing data are required; or
 - (C) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.
- (2) The Article may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government Prime Contract.
- (h) If this is a cost-reimbursement contract with an educational or other nonprofit institution, the provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this Contract.

AUTHORITY OF JPL REPRESENTATIVES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

- (a) No request, notice, authorization, direction or order received by the Contractor and issued either pursuant to a provision of this Contract, to a provision of any document incorporated in this Contract by reference, or otherwise, shall be binding upon either the Contractor or the Institute unless issued or ratified in writing by the JPL Negotiator, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them. Designations of authorized representatives shall define the scope and limitations of the authorized representatives' authorities.
- (b) The Contractor shall immediately notify, in writing, the JPL Negotiator, or the Manager, Acquisition Division, JPL, whenever a request, notice, authorization, direction, or order has been received from a representative of JPL other than the JPL Negotiator, or the Manager, Acquisition Division, JPL, which, but for the lack of authorization on the part of the issuing JPL representative, would: (i) effect a change within the meaning of the "Changes" Article; (ii) increase or decrease the Contract amount or amount allotted to this Contract; or (iii) otherwise be the basis for assertion of a claim by the Contractor under any provision of the Contract.

AUTHORIZATION AND CONSENT [CT, FP-R&D, T&MC, LH-T&M, CREI, A-E – 4/99] [FAR 52.227-1 – 7/95, ALT I]

- (a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of the Prime Contract or any subcontract at any tier.
- (b) The Contractor agrees to include, and require inclusion of, this Article, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed \$100,000); however, omission of this Article from any subcontract, under or over \$100,000, does not affect this authorization and consent.

BANKRUPTCY [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.242-13, 7/95]

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the JPL negotiator responsible for administering the Contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of JPL contract numbers for all JPL contracts against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

BUY AMERICAN ACT – SUPPLIES [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, CREI – 4/99] [FAR 52.225-3 - 1/94]

(This Article applies to supply contracts exceeding \$2,500 and to contracts for services which involve the furnishing of supplies when the supply portion of the contract exceeds \$2,500.)

Incorporate by reference FAR 52.225-3, Buy American Act - Supplies.

CHANGES – LABOR-HOUR/TIME-AND-MATERIAL [LH-T&M, T&MC – 4/99] [FAR 52.243-3 – 8/87]

- (a) JPL may at any time, by written unilateral modification, and without notice to the sureties, if any, make changes or issue directions within the general scope of this Contract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for JPL in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.
- (7) Amount of GFP.
- (b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for performance of any part of the work under this Contract, whether or not changed by the modification, or otherwise affects any other provision of this Contract, JPL shall make an equitable adjustment in the (i) ceiling price, (ii) hourly rates, (iii) delivery or performance schedule, and (iv) other affected provisions, and shall modify the Contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this Article within 30 days from the date of receipt of the modification. However, if JPL decides that the facts justify it, JPL may receive and act upon a proposal submitted before final payment of the Contract.
- (d) Except as provided in paragraph (e) below, nothing contained in this Article shall excuse the Contractor from proceeding with the Contract as changed.
- (e) Notwithstanding the provisions of paragraphs (a) through (d) above, the ceiling price of this Contract shall not be increased or deemed to be increased except by specific written modification of the Contract indicating the new Contract ceiling price. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in paragraph (f) or (g) of the Article of this Contract entitled "Timekeeping and Payments."

CLEAN AIR AND WATER [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 23.104 – 4/84; 52.223-2 - 4/84]

(This Article does not apply to the use of facilities outside the United States. The Article applies to the Contract if it exceeds \$100,000 [or \$100,000 in one year for an indefinite delivery contract], or the facility to be used has been the subject of a conviction under the Air Act or Water Act and is listed by the EPA as a violating facility, and the acquisition is not otherwise exempt under FAR 23.104.)

Incorporate by reference FAR 52.223-2, Clean Air and Water (April 1984).

COMPLIANCE WITH EXPORT REGULATIONS [CT, FP-NR&D FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 5-00]

- (a) Hardware, software and related materials, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act, Arms Export Control Act, and their associated regulations, and may be subject to export or import regulations in other countries. Contractor agrees to strictly comply with all U.S. Export Control Regulations and acknowledges that, when applicable, it has the responsibility to obtain export licenses, or other export authority as may be required, for hardware, software, and related materials and services, including technical data, related to the performance of this Contract, which are in its possession or under its control.
- (b) JPL's NASA Contracting Officer is required to provide reports to NASA headquarters on the status and location of government property which has left United States Territory. Contractor will not export any government property without prior approval from the NASA CO through the JPL negotiator.
- (c) (1) The International Traffic in Arms Regulation (ITAR) 22 CFR Parts 120 to 130 inclusive, and Export Administration Regulation (EAR) 15 CFR parts 730 to 774 inclusive, restrict foreign national access to technological information. This information is available on JPL Web Space, in unpublished JPL documents, through technical conversations with JPL employees, and through visual inspection of JPL hardware. For the purpose of this clause, foreign nationals are defined as all individuals in the United States or overseas who are not U.S. Citizens, holders of U.S. green cards, or holders of political asylum papers issued by the U.S. Department of State.
- (2) The Contractor shall not allow access by any foreign national to: JPL material which reveals technology, financial information, or business strategy information, and to JPL internal Web Space in performance of this Contract, without prior written approval by JPL Security, the JPL Network and Computer Security Group, and the JPL International and Legislative Affairs Office through the JPL Negotiator.

- (d) Contractor agrees to insert this clause, including this paragraph, in all subcontracts which could involve: an export as defined in the ITAR and EAR, subcontractor employee access to JPL Web Space, or subcontractor employee access to JPL material which reveals technology, financial information, or business strategy information.

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT [FP-NR&D, FP-R&D, LH-T&M, T&MC, FPC, A-E – 4/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) Contractor agrees to comply with the Americans with Disabilities Act (42 U.S.C. 12101, et. seq.) and all implementing regulations.
- (b) Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees from any loss, cost, damage, expense or liability or suit therefor, by reason of actual or alleged property damage or personal injury of whatever kind or character, arising out of, or in connection with performance of the requirements of paragraph (a) above by the Contractor or any of its subcontractors, however the same may be caused, excepting only such loss, cost, damage, expense or liability attributable to the sole or contributory active negligence of the Government or of the Institute, its trustees, officers, or employees.
- (c) Contractor agrees to insert this Article, including (c), in all subcontracts and purchase orders hereunder.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 22.305 - 7/95; 52.222-4 - 7/95]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This provision is not applicable to contracts for supplies, materials, or articles ordinarily available in the open market, contracts for transportation by land, air, or water, or for the transmission of intelligence, contracts of \$100,000 or less, contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a state, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, and Johnson Island, and contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics, exempt under regulations of the Secretary of Labor (29 CFR 5.15), contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contract Acts, and contracts for commercial items.
- (b) FAR clause 52.222-4 (July 1995) is hereby incorporated by reference in toto, except that:
 - (1) The words “JPL negotiator or JPL’s Contracting Officer” shall be substituted for the words “Contracting Officer” wherever they appear;
 - (2) The word “Contractor” shall be substituted for the words “Prime Contractor” wherever they appear; and
 - (3) The words “with JPL” shall be substituted for the words “Federal Contract with the same Prime Contractor” wherever they appear.

CONTRACTOR AND SUBCONTRACTOR COST OR PRICING DATA, OR INFORMATION OTHER THAN COST OR PRICING DATA AND PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 8/01] [FAR 15.403-4 - 10/00; 52.215-11 - 10/97; 52.215-12 - 10/97; 52.215-13 - 10/97; 52.215-20 - 10/97; 52.215-21 - 10/97]

(This Article is applicable if either the basic Contract or any modification exceeds \$550,000.)

- (a) Contractor Cost or Pricing Data.

- (1) Whenever the negotiated price of the basic Contract, or the negotiated price of any change, or other modification to this Contract is expected to exceed \$550,000, the Contractor agrees to furnish the Institute certified cost or pricing data, unless a waiver applies or a determination is made that an exception applies (the price is based on adequate price competition, prices set by law or regulation, or the contract is for a commercial item). Whenever certified cost or pricing data are required, the Contractor agrees to furnish the data in the format requested by JPL or if JPL does not so specify, per Table 15-2 of FAR 15.408 and agrees to submit the JPL certificate form JPL 2496 or equivalent as soon as practicable after agreement on price but before award.

(2) Exceptions to Cost or Pricing Data.

- (A) (i) Basic Contracts. In lieu of submitting cost or pricing data for the basic Contract, offerors may submit a written request for exception by submitting the information described under paragraph (B), below.
- (ii) Contract Modifications. In lieu of submitting cost or pricing data for modifications under this Contract, for price adjustments expected to exceed \$550,000 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described under paragraph (B), below.
- (iii) JPL may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.
- (B) The relevant part of the following information is to be submitted when requesting an exception:
 - (i) Identification of the law or regulation establishing the price offered. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.
 - (ii) For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include:
 - a. For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.
 - b. For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.
 - c. For items included on an active Federal Supply Service Multiple Award Schedule or any other Federal Government contract, proof that an exception has been granted for the schedule item.
 - (iii) Information on modifications of contracts or subcontracts for commercial items. If (i) the original Contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, or prices set by law or regulation, or was a contract or subcontract for a commercial item; and (ii) the modification (to the Contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the Contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.
- (C) The Offeror/Contractor grants JPL or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's/Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) Subcontractor Cost or Pricing Data.

- (1) Before awarding any subcontract expected to exceed \$550,000 when entered into, or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$550,000, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the subcontract or modification is eligible for an exception listed in paragraph (a), above.
- (2) The requirement for obtaining certified cost or pricing data with respect to any subcontract change or other modification does not apply to any subcontract change or modification, at any tier, where this Contract is a firm fixed-price or firm fixed-price with escalation contract unless such change or other modification results

from a Contract change or other modification to this Contract, nor does it apply to a subcontract change or other modification, at any tier, where this Contract is not firm fixed-price or firm fixed-price with escalation, unless the price for such change or modification becomes reimbursable under this Contract.

- (3) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR Part 15, and any corresponding implementing or supplementing provisions in the NFS, that, to the best of its knowledge and belief, the data submitted under subparagraph (b)(1) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.
- (4) In each subcontract that exceeds \$550,000 when entered into, the Contractor shall insert either:
 - (A) The substance of this Article, including this paragraph (4), if paragraph (b)(1) above requires submission of cost or pricing data for the subcontract; or
 - (B) The substance of the clause at FAR 52.215-13, "Subcontractor Cost or Pricing Data - Modifications," including any corresponding implementing or supplementing provisions in the NFS.

(c) Price Reduction for Defective Cost or Pricing Data.

- (1) If any price, including profit or fee, negotiated in connection with this Contract, or any cost reimbursable under this Contract, was increased by any significant amount because (i) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (ii) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (iii) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.
- (2) Any reduction in the Contract price under paragraph (1) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (i) the actual subcontract or (ii) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
- (3) (A) If the Contracting Officer determines under paragraph (1) of this Article that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
 - (i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the Contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
 - (ii) The Institute should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of JPL.
 - (iii) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.
 - (iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.
- (B) (i) Except as prohibited by subdivision (c)(3)(B)(ii) of this Article, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a Contract price reduction if:
 - a. The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
 - b. The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if:
 - a. The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

- b. The Government proves that the facts demonstrate that the Contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.
- (4) In the event of a disagreement between the Contracting Officer and the Contractor with respect to a question of fact involved in the Contracting Officer's determination to reduce the price of this Contract, the Contractor may, subject to the prior approval of the Institute, which approval will not be unreasonably withheld, process such disagreement as a dispute to the extent that it may be entitled to do so under the provisions of the Prime Contract.
- (d) If any reduction in the Contract price under this Article reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall indemnify the Institute for costs incurred by the Institute involved in repayments to the Government resulting from the Contractor's defective pricing including:
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Institute at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

CONTRACTOR EMPLOYMENT OF JPL EMPLOYEES' CHILDREN AND RELATIVES (CONTRACTOR'S EMPLOYEES IN RESIDENCE AT JPL) [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) When work under this Contract is to be performed at any JPL-controlled facility, the Contractor agrees to require applicants for such work, as part of the application process, to identify any relatives they know to be employed at JPL. The Contractor also agrees to notify the cognizant negotiator prior to hiring an applicant who so identifies a relative. The Contractor agrees to abide by JPL's determination as to whether the applicant may be assigned to a particular JPL organization.
- (b) The term "relatives" means parents, stepparents, grandparents, sisters, brothers, spouse/same-sex-domestic-partner, children, stepchildren, grandchildren, aunts, uncles, nieces, nephews, legal wards, and spouse's parents, grandparents, sisters and brothers.

CONTRACTOR RECRUITING ACTIVITY [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC – 2/00]

(Work performed outside the United States is exempt from the requirements of this Article.)

Except as may be specifically authorized by JPL in writing, during the performance of this Contract the Contractor shall refrain from engaging in any activity related to employment recruiting on any of the premises of JPL.

CROSS-WAIVERS OF LIABILITY FOR SPACE SHUTTLE SERVICES, NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES, AND FOR SPACE STATION ACTIVITIES [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M – 4/99] [NFS 1852.228-72 - 9/93; 1852.228-78 – 9/93; 1852.228-76 – 12/94]

(This Article is applicable if the Contract value is \$100,000 or more.)

The Contractor understands that the work performed under this Contract may be in support of "Protected Space Operations" as defined in the three paragraphs (b)(5) under Part A, Part B, and Part C below, and therefore agrees to all three cross-waiver provisions set forth below. The Contractor shall incorporate this Article into subcontracts which are for \$100,000 or more.

PART A. CROSS-WAIVER OF LIABILITY FOR SPACE SHUTTLE SERVICES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving Space Shuttle services are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and related entities under their contracts. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
 - (1) "Contractors" and "Subcontractors" include suppliers of any kind.

- (2) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage;
- (3) "Party" means a person or entity that signs an agreement involving a Space Shuttle service;
- (4) "Payload" means any property to be flown or used on or in the Space Shuttle; and
- (5) "Protected Space Operations" means all Space Shuttle and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving Space Shuttle services or performed under this Contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for Space Shuttle-related activities necessary to implement an agreement involving Space Shuttle services or to perform this Contract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of the Space Shuttle, transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (6) "Related entity" means:
 - (A) A party's contractors or subcontractors at any tier;
 - (B) A party's users or customers at any tier; or
 - (C) A contractor or subcontractor of a party's user or customer at any tier.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and
 - (C) The employees of any of the entities identified in (c)(1)(A) and (c)(1)(B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (March 29, 1972, 24 United States Treaties and other International Agreements (U.S.T.) 2389), Treaties and Other International Acts Series (T.I.A.S.) No. 7762 in which the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
 - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;

- (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

PART B. CROSS-WAIVER OF LIABILITY FOR NASA EXPENDABLE LAUNCH VEHICLE (ELV) LAUNCHES

- (a) As prescribed by regulation (14 C.F.R. Part 1266), NASA agreements involving ELV launches are required to contain broad cross-waivers of liability among the parties and the parties' related entities to encourage participation in space exploration, use, and investment. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve the objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
 - (1) "Contractors" and "Subcontractors" include suppliers of any kind.
 - (2) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage;
 - (3) "Party" means a person or entity that signs an agreement involving an ELV launch;
 - (4) "Payload" means any property to be flown or used on or in the ELV; and
 - (5) "Protected Space Operations" means all ELV and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of an agreement involving an ELV launch or performed under the Contract. "Protected Space Operations" excludes activities on Earth which are conducted on return from space to develop further a payload's product or process except when such development is for ELV-related activities necessary to implement an agreement involving an ELV launch or to perform the contract. It includes, but is not limited to:
 - (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of ELVs, transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
 - (6) "Related entity" means:
 - (A) A party's contractors or subcontractors at any tier;
 - (B) A party's users or customers at any tier; or
 - (C) A contractor or subcontractor of a party's user or customer at any tier.
- (c) (1) The Contractor agrees to a waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to a delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract, against:
 - (A) Any party other than the Government;
 - (B) A related entity of any party other than the Government; and
 - (C) The employees of any of the entities identified in (c)(1)(A) and (B) above.

- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and Other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this waiver of liability shall not be applicable to:
 - (A) Claims between any party and its related entities or claims between any party's related entities (e.g., claims between the Government and the Contractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.
- (6) This cross-waiver shall not be applicable when the Commercial Space Launch Act cross-waiver (49 U.S.C. App. 2615) is applicable.

PART C. CROSS-WAIVER OF LIABILITY FOR SPACE STATION ACTIVITIES

- (a) The Intergovernmental Agreement for Space Station Freedom contains a broad cross-waiver provision to encourage participation in the exploration and use of outer space through the Space Station. The purpose of this provision is to extend this cross-waiver requirement to contractors and subcontractors as related entities of NASA. This cross-waiver of liability shall be broadly construed to achieve this objective of encouraging participation in space activities.
- (b) As used in this provision, the term:
 - (1) "Damage" means:
 - (A) Bodily injury to, or other impairment of health of, or death of, any person;
 - (B) Damage to, loss of, or loss of use of any property;
 - (C) Loss of revenue or profits; or
 - (D) Other direct, indirect, or consequential damage.
 - (2) "Launch Vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.
 - (3) "Partner State" means each contracting party for which the "Agreement among the Government of the United States of America, Governments of Member States of the European Space Agency, Government of Japan, and the Government of Canada on Cooperation in the Detailed Design, Development, Operation, and Utilization of the Permanently Manned Civil Space Station" (the "Intergovernmental Agreement") has entered into force, in accordance with Article 25 of the Intergovernmental Agreement, and also includes any future signatories of the Intergovernmental Agreement. It includes the Cooperating Agency of a Partner State. The National Aeronautics and Space Administration (NASA) for the United States, the Canadian Space Agency (CSA) for the Government of Canada, the European Space Agency (ESA), and the Science and Technology Agency of Japan (STA) are the Cooperating Agencies responsible for implementing Space Station cooperation. A Partner State also includes any entity specified in the Memorandum of Understanding (MOU) between NASA and the Government of Japan to assist the Government of Japan Cooperating Agency in the implementation of that MOU.
 - (4) "Payload" means any property to be flown or used on or in a launch vehicle or the Space Station.
 - (5) "Protected Space Operations" means all launch vehicle activities, space station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space performed in furtherance of

the Intergovernmental Agreement or performed under this Contract. "Protected Space Operations" also includes all activities related to evolution of the Space Station as provided for in Article 14 of the Intergovernmental Agreement. "Protected Space Operations" excludes activities on Earth which are conducted on return from the Space Station to develop further a payload's product or process except when such development is for Space Station-related activities in implementation of the Intergovernmental Agreement or in performance of this Contract. It includes, but is not limited to:

- (A) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, payloads, related support equipment, and facilities and services;
 - (B) All activities related to ground support, test, training, simulation, or guidance and control equipment and related facilities or services.
- (6) "Related entity" means:
- (A) A Partner State's contractors or subcontracts at any tier;
 - (B) A Partner State's users or customers at any tier; or
 - (C) A contractor or subcontractor of a Partner State's user or customer at any tier.
- (7) "Contractors" and "Subcontractors" include suppliers of any kind.
- (c) (1) The Contractor agrees to a cross-waiver of liability pursuant to which the Contractor waives all claims against any of the entities or persons listed in paragraphs (c)(1)(A) through (c)(1)(C) of this provision based on damage arising out of Protected Space Operations. This waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, including but not limited to delict (a term used in civil law countries to denote a class of cases similar to tort) and tort (including negligence of every degree and kind) and contract against:
- (A) Any Partner State other than the United States;
 - (B) A related entity of any Partner State other than the United States; and
 - (C) The employees of any of the entities identified in paragraphs (c)(1)(A) and (B) above.
- (2) The Contractor agrees to extend the waiver of liability as set forth in paragraph (c)(1) of this provision to subcontractors at any tier by requiring them, by contract or otherwise, to agree to waive all claims against the entities or persons identified in paragraphs (c)(1)(A) through (c)(1)(C) of this provision.
- (3) For avoidance of doubt, this cross-waiver includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects, (March 29, 1972, 24 United States Treaties and Other International Agreements (U.S.T.) 2389, Treaties and other International Acts Series (T.I.A.S.) No. 7762) in which the person, entity, or property causing the damage is involved in Protected Space Operations.
- (4) Notwithstanding the other provisions of this provision, this cross-waiver of liability shall not be applicable to:
- (A) Claims between the United States and its related entities or claims between the related entities of any Partner State (e.g., claims between the Government and the Contractor are included within this exception);
 - (B) Claims made by a natural person, his/her estate, survivors, or subrogees for injury or death of such natural person;
 - (C) Claims for damage caused by willful misconduct; and
 - (D) Intellectual property claims.
- (5) Nothing in this section shall be construed to create the basis for a claim or suit where none would otherwise exist.

Incorporate by reference FAR 52.211-15, Defense Priority and Allocation Requirements.

DEFINITIONS [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, A-E – 4/99] [FAR 52.202-1 – 10/95]

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term “Administrator” means the Administrator or Deputy Administrator of the National Aeronautics and Space Administration.
- (b) The term “commercial component” means any component that is a commercial item.
- (c) The term “commercial item” means (see related term “nondevelopmental item,” below):
 - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that:
 - (A) Has been sold, leased, or licensed to the general public; or
 - (B) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (2) of this Article, but for:
 - (A) Modifications of a type customarily available in the commercial marketplace; or
 - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. “Minor” modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this Article, and if the source of such services:
 - (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 - (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
 - (8) A nondevelopmental item, if the procuring activity determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below).
- (d) The term “component” means any item supplied as part of an end item or of another component.
- (e) The term “contract amount” means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.

- (f) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) The term "Contractor" means the selling party to this Contract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Contractor" is the first tier subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (h) (1) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
(2) Any reference to the Contract Disputes Act is meant to refer to the Disputes provision in this Contract if any.
- (i) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (j) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (k) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (l) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.
- (m) The term "JPL negotiator" means the individual authorized to issue and administer this Contract for JPL.
- (n) The term "NASA" means the National Aeronautics and Space Administration.
- (o) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (p) The term "nondevelopmental item" means:
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (p)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (p)(1) or (2) solely because the item is not yet in use.
- (q) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (r) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government),.
- (s) The term "Schedule" means the statements in the order/contract, including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (t) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (u) The terms "United States" or "U.S." mean the United States of America.

DRUG-FREE WORKPLACE REQUIREMENTS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]
[FAR 52.223-6 – 1/97]

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

ELECTRICAL EQUIPMENT ACQUISITION [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99]

(This Article is applicable if the Contract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Contractor under this Contract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Contractor at the Contractor's expense. The Contractor agrees to require subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-37 – 1/88]

(This Article is applicable if this Contract (and any subcontract) is for \$10,000 or more, unless exempted by rules, regulations, or orders of the Secretary of Labor.)

Incorporate by reference FAR 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

ENVIRONMENTAL COMPLIANCE [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-11 – 6/96; 52.223-12 - 5/95]

(This Article is applicable to all contracts to be performed at least partially within the United States, its possessions, and Puerto Rico.)

- (a) Environmental Compliance. Environmental controls shall be in accordance with all applicable Federal, State and local regulatory requirements and in accordance with all applicable Executive Orders of the President. In addition the contractor shall comply with the provisions set forth below.
- (b) The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C.7671g and 7671h) as each or both apply to this contract.
- (c) (1) Definition. "Ozone-depleting substance", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
- (2) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) (*)_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

(* The Contractor shall insert the name of the substance(s))

EQUAL OPPORTUNITY [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-26 – 4/84]

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Contract], the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with FAR 52.222-26 during performance of this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

EQUIPMENT (EXCLUDING VEHICLES), TOOLS AND MATERIAL (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL) [CT, LH-T&M, T&MC – 4/99]

(This Article applies if the Contract work will be performed at a JPL-controlled facility, and tools, equipment, or materials will be issued to the Contractor's personnel by JPL.)

- (a) Contractor personnel will not bring work Items, i.e., tools, equipment (for example, personal computers and printers), or material, upon the premises while working at a JPL-controlled facility. JPL will provide those Items necessary for performance of work at a JPL-controlled facility, and such Items shall not be removed from the premises unless removal from JPL premises is specifically authorized by the JPL Supply and Equipment Section Manager or designated representative. Items so provided shall not be considered "Government-Furnished Property," and will not be subject to the "Government Property" Article of this Contract, but will be issued to individual Contractor personnel. Contractor personnel will be held to the same standards of conduct regarding such Items as JPL employees, that is:
 - (1) Contractor personnel shall promptly notify their supervisor or the Cognizant JPL Technical Representative of any loss, damage, or destruction of Items issued to them.
 - (2) The Contractor will be held liable for any loss, damage, or destruction of such Items resulting from gross negligence, willful misconduct, unlawful appropriation by its personnel for personal use or benefit, or use for other than JPL business on the part of its personnel.
- (b) The Contractor agrees to inform its personnel who may work at a JPL-controlled facility of this procedure and of their responsibilities. JPL will advise the Contractor promptly upon determining that any Contractor personnel has failed to return or satisfactorily account for any Item issued to such personnel. The Contractor agrees that JPL may withhold from any monies due or to become due the Contractor under this Contract, or to otherwise reimburse JPL, the value of any Items issued to Contractor personnel and neither returned nor satisfactorily accounted for upon completion of work under this Contract or when so requested by JPL.

EXCUSABLE DELAYS [CT, LH-T&M, T&MC – 4/99]

- (a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these are (i) acts of God or of the public enemy, (ii) acts of the Government in either its sovereign or contractual capacity, (iii) fires, (iv) floods, (v) epidemics, (vi) quarantine restrictions, (vii) strikes, (viii) freight embargoes, and (ix) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
 - (1) The subcontracted supplies or services were obtainable from other sources;
 - (2) JPL ordered the Contractor in writing to purchase these supplies or services from the other source; and
 - (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, JPL shall ascertain the facts and extent of the failure. If JPL determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Institute under the "Termination" Article of this Contract.

EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, CREI – 4/99] [NFS 1852.227-86 – 12/87]

(This Article is applicable to the acquisition of any existing commercial computer software under this Contract.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Vendor/Contractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Contract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Contract.
- (b) Although the Vendor/Contractor might not propose its standard commercial software license until after this Purchase Order/Contract has been issued, or at or after the time the computer software is delivered, such

license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Vendor/Contractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Contract into which this Article is incorporated.

- (c) The Vendor's/Contractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Contract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Vendor/Contractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:
 - (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Contract.
 - (2) The commercial computer software may be:
 - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government contract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
 - (B) Reproduced for safekeeping (archives) or backup purposes;
 - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
 - (D) Disclosed and reproduced for use by Government or Institute contractors or their subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.
 - (3) If the incorporated Vendor's/Contractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
 - (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government contract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above.
 - (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.
- (e) The Contractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Contract in accordance with the terms of this Contract.

FACSIMILE COPIES ACCEPTABLE [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

The parties agree that facsimile (fax) copies of contract documents are just as binding as originally executed documents.

FEDERAL, STATE, AND LOCAL TAXES [LH-T&M, T&MC – 4/99] [FAR 52.229-3 – 1/91]

The rates, and any other amounts reimbursable under this Contract, include all Federal, State, and local taxes determined to be allowable under FAR 31.2 and any corresponding implementing or supplementing provisions in the NFS.

FELONY CONVICTION INFORMATION (CONTRACTOR PERSONNEL IN RESIDENCE AT JPL) [CT, LH-T&M, T&MC – 4/99]

(This Article applies to contracts/subcontracts when contractor- and/or subcontractor-furnished personnel will be performing work in residence at JPL- controlled facilities.)

When access to JPL facilities is required by Contractor personnel, the Contractor shall provide JPL-requested personnel access information, including an Affiliate Access Request (form JPL 1943), attached hereto, executed by the Contractor and the person requiring access. This request shall be provided to the JPL Plant Protection Office at least 24 hours prior to the time access is required to JPL premises. JPL reserves the right to approve or deny access to its facilities, based on the response given on form JPL 1943 or on other information available to JPL.

GEOGRAPHIC PARTICIPATION IN THE AEROSPACE PROGRAM [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, CREI – 2/00] [NFS 1852.244-70 – 4/85]

(This Article is applicable to contracts and subcontracts of \$100,000 or more. Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.244-70, Geographic Participation in the Aerospace Program.

GOVERNMENT PROPERTY [FP-NR&D, FP-R&D, LH-T&M, T&MC, FPC, A-E – 4/99] [FAR 52.245-4 – 4/84]

- (a) JPL shall deliver to the Contractor, at the time stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the delivery or performance schedule, the Government-owned property described as JPL-furnished property in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, JPL shall equitably adjust affected provisions of this Contract in accordance with the Changes Article when:
 - (1) The Contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (b) Title to JPL-furnished property shall remain in the Government. The Contractor shall use the JPL-furnished property only in connection with this Contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for JPL or Government inspection at all reasonable times.
- (c) Upon delivery of JPL-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except:
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in performing this Contract; or
 - (3) As otherwise provided for by the provisions of this Contract.
- (d) Upon completing this Contract, the Contractor shall follow the instructions of JPL regarding the disposition of all JPL-furnished property not consumed in performing this Contract or previously delivered to JPL. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by JPL. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid as directed by JPL.
- (e) If this Contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "JPL-furnished" (wherever they appear in this Article) shall be construed as "United States Government" and "United States Government-owned/JPL-furnished," respectively.
- (f) If JPL-furnished property has been provided to the Contractor under this Contract, the Contractor shall submit NASA Form 1018, "The Report of Government-Owned/Contractor-Held Property" (or equivalent) (or a negative report, if applicable), to JPL annually (date to be determined by JPL).

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99] [FAR 52.223-3 – 1/97, Alt. I – 7/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Contract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

INJURY AND ILLNESS PREVENTION PROGRAM [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

All Contractors whose personnel work at a site in California must establish and implement an effective injury and illness prevention program in compliance with California law.

(a) Definitions.

- (1) "Contractor's managerial personnel," as used in this Article, means any of the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (A) All or substantially all of the Contractor's business;
 - (B) All or substantially all of the Contractor's operation at any one plant or separate location at which the Contract is being performed; or
 - (C) A separate and complete major industrial operation connected with the performance of this Contract.
 - (2) "Materials," as used in this Article, includes data when the Contract does not include the Warranty of Data clause.
- (b) The Contractor shall provide and maintain an inspection system acceptable to JPL covering the material, fabricating methods, work, and services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to JPL during Contract performance and for as long afterwards as the Contract requires.
- (c) JPL has the right to inspect and test all materials furnished and services performed under this Contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. JPL, through any authorized representative, may also inspect the plant or plants of the Contractor or any subcontractor engaged in Contract performance. JPL shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If JPL performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) Unless otherwise specified in the Contract, JPL shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (f) At any time during Contract performance, but not later than six months (or such other time as may be specified in the Schedule) after acceptance of the services or materials last delivered under this Contract, JPL may require the Contractor to replace or correct services or materials that at time of delivery failed to meet Contract requirements. Except as otherwise specified in paragraph (h) below, the cost of replacement or correction shall be determined under the "Timekeeping and Payments" Article of this Contract, but the "hourly rate" for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.
- (g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or ceiling price as increased by JPL), JPL may:
- (1) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this Contract (or require repayment of any payments theretofor made); or
 - (2) Terminate this Contract for default.
- (h) Notwithstanding paragraphs (f) and (g) above, JPL may at any time require the Contractor to remedy by correction or replacement, without cost to the Institute, any failure by the Contractor to comply with the requirements of this Contract, if the failure is due to (i) fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel or (ii) the conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (i) This Article applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this Contract.

- (j) The Contractor has no obligation or liability under this Contract to correct or replace materials and services that at time of delivery do not meet Contract requirements, except as provided in this Article or as may be otherwise specified in the Contract.
- (k) Unless otherwise specified in the Schedule, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the Article entitled "Government Property." (l) If this Contract, including those documents forming a part hereof by reference or incorporation, provides for or requires the submission of any of the work to JPL for approval, any such approval given by JPL, prior to final acceptance, shall not relieve the Contractor of its responsibility for complying with the specifications and other provisions of this Contract. Any such approval shall not be construed as an assumption by JPL of the responsibility that such work complies or will comply with the specifications or other provisions of this Contract.
- (m) The Government has the right to inspect and evaluate the work performed or being performed under the Contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

INSURANCE AND INDEMNIFICATION [FP-NR&D, FP-R&D, CIS, LH/T&M, T&MC – 2/00] [FAR 52.228-5 - 9/89]

(Work performed outside the United States is exempt from the requirements of this Article.)

(a) This Article is applicable if:

- (1) The performance of this Contract includes activities which could endanger non-Contractor personnel and such activities are performed at a location which is not secured by appropriate Contractor-controlled access restrictions; or
- (2) This Contract requires work on a Government installation or premises under the control of the Institute, unless:

(A) Only a small amount of work is required on the Government installation or Institute-controlled premises; or

(B) All such work is to be performed outside the United States, its possessions, or Puerto Rico.

(b) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.

- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
- (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.

(c) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should

such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.

- (d) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (e) Subcontracts.
- (1) The Contractor shall insert the substance of this Article, including this paragraph (e), in subcontracts under this Contract if:
- (A) The performance of the subcontract includes activities which could endanger non-subcontractor personnel and such activities are performed at a location which is not secured by appropriate subcontractor-controlled access restrictions; or
- (B) This subcontract requires work on a Government installation or premises under the control of the Institute, unless:
- (i) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
- (ii) All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.
- (2) At least five days before entry of each such subcontractor's personnel on the Government installation or Institute-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such subcontractor.

INTEGRITY OF UNIT PRICES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 4/99] [FAR 52.215-14 – 10/97]

(This Article is applicable if the initial Contract price exceeds \$100,000, unless the Contract is for services where supplies are not required, construction or architect-engineer services, utility services, commercial items, or petroleum products.)

- (a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.
- (b) The Contractor shall insert the substance of this Article in all subcontracts meeting the applicability prescription above.

LIMITATION OF LIABILITY [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 8/01] [FAR 52.246-23, 52.246-24, and 52.246-25 – 2/97]

This Article includes 3 Parts: Part 2, Limitation of Liability – High Value Items, applies to all items delivered under this Contract to JPL which have a unit cost exceeding \$100,000; Part 1, Limitation of Liability, applies to all other items delivered under this Contract. Part 3, Limitation of Liability – Services, applies if the contract is over \$100,000 and requires the performance of services.

PART 1: LIMITATION OF LIABILITY

(applies to all items delivered under this Contract other than High Value Items)

- (a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this Contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding

the supplies delivered under this Contract) that (i) occurs after acceptance of the supplies delivered under this Contract and (ii) results from any defects or deficiencies in the supplies.

- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Contract, the Contractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute and the Government occurring after acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Contract.
- (d) The Contractor shall include this Article, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts.

PART 2: LIMITATION OF LIABILITY – HIGH VALUE ITEMS

(applies to all items delivered under this Contract to JPL which have a unit cost exceeding \$100,000)

- (a) Except as provided in paragraphs (b) through (e) below, and notwithstanding any other provision of this Contract, the Contractor shall not be liable for loss of or damage to property of the Institute or the Government (including the supplies delivered under this Contract) that:
 - (1) Occurs after JPL acceptance of the supplies delivered under this Contract; and
 - (2) Results from any defects or deficiencies in the supplies.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or JPL's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this Article, means the Contractor's directors, officers and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through purchase or use of the supplies required to be delivered under this Contract, the Contractor shall be liable to the Institute and the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after JPL acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this Contract.
- (d)
 - (1) This Article does not diminish the Contractor's obligations, to the extent that they arise otherwise under this Contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this Contract.
 - (2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by JPL, the Contractor shall, as determined by JPL:

- (A) Pay the Institute the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred; or
 - (B) Provide other equitable relief.
- (e) This Article shall not limit or otherwise affect the Institute's or the Government's rights under Articles, if included in this Contract, that cover:
- (1) Warranty of technical data;
 - (2) Ground and flight risks or aircraft flight risks; or
 - (3) Government property.
- (f) In each subcontract, except a subcontract covered by paragraph (g) below, the Contractor shall insert the appropriate Article, supplemented as necessary to reflect the relationship of the contracting parties, as follows:
- (1) In subcontracts for high-value items only, after obtaining JPL's advance written approval, insert this Article, including this paragraph (f).
 - (2) In subcontracts for other end items only, insert the clause at FAR subsection 52.246-23, Limitation of Liability.
- (g) In any subcontract for both high-value items for which this Article is appropriate, and other end items for which the clause at FAR subsection 52.246-23, and any corresponding implementing or supplementing provisions in the NFS, is appropriate, after obtaining the JPL's advance written approval to use this Article, the Contractor shall:
- (1) Include both this Article and the FAR clause;
 - (2) Identify high-value items by line item; and
 - (3) Insert the following preamble before paragraph (a) of this Article as used in that subcontract:
- "(This Article shall apply only to those items identified in this Contract as being subject to this Article.)"

PART 3: LIMITATION OF LIABILITY – SERVICES

(applies if the contract is over \$100,000 and requires the performance of services)

- (a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this Contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Institute or the Government that:
 - (1) Occurs after Institute acceptance of services performed under this Contract; and
 - (2) Results from any defects or deficiencies in the services performed or materials furnished.
- (b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Institute acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this provision, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Contractor's business;
 - (2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the Contract is being performed; or
 - (3) A separate and complete major industrial operation connected with the performance of this Contract.
- (c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Institute or the Government through the Contractor's performance of services or furnishing of materials under this Contract, the Contractor shall be liable to the Institute or the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Institute or the Government occurring after Institute acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this Contract.

- (d) The Contractor shall include this provision, including this paragraph (d), supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts over \$25,000.

LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.203-12 – 6/97]

(This Article applies if this Contract is expected to exceed \$100,000.)

Incorporate by reference FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions (June 1997).

LIMITATION ON WITHHOLDING OF PAYMENTS [CT, LHT&M, T&MC, CREI – 4/99] [FAR 52.232-9 – 4/84]

If more than one Article of this Contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one Article at that time; provided, that this limitation shall not apply to:

- (a) Withholdings pursuant to any Article relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this Contract; and
- (c) The recovery of overpayments.

MATERIAL REQUIREMENTS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.211-5 – 10/97]

(a) Definitions.

As used in this Article:

- (1) New means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; provided that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.
 - (2) Reconditioned means restored to the original normal operating condition by readjustments and material replacement.
 - (3) Recovered material means waste materials and by-products that have been recovered or diverted from solid waste including post-consumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.
 - (4) Remanufactured means factory rebuilt to original specifications.
 - (5) Virgin material means previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore, or any undeveloped resource that is, or with new technology will become, a source of raw materials.
- (b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, as defined in this Article.
 - (c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.
 - (d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to JPL for approval.
 - (e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, shall not be used unless the Contractor has proposed the use of such supplies, and JPL has authorized their use.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.227-2 – 8/96]

(The provisions of this Article shall be applicable only if the amount of this Contract is expected to exceed \$100,000, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless ultimate delivery is into those areas.)

- (a) The Contractor shall report to the Contracting Officer and JPL, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this Contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed under this Contract, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.
- (c) The Contractor agrees to include, and require inclusion of, this Article in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

NOTICE OF RADIOACTIVE MATERIALS [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.223-7 – 1/97]

(This Article is applicable only if this Contract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects.

NOTICE TO JPL OF LABOR DISPUTES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-1 – 2/97]

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice to JPL. The initial notice shall include the following:
 - (1) Identification of parts/materials, etc., which are or may be affected;
 - (2) Brief description of work-around plans to avoid delivery or performance delays. If the actual or potential dispute involves a lower-tier subcontractor, advise as to potential alternate sources;
 - (3) Other Government agencies having responsibility for any functions concerning the affected operation, e.g., quality control, agency resident representative, etc., and the title, name and telephone of the agency representative.
 - (4) Other Government agencies which have been notified of the situation, and if available, the title, name and telephone number of any representative of another agency who is involved with the actual or threatened labor dispute;
 - (5) Specific information regarding transportation of parts/materials or personnel which is or may be affected;
 - (6) Manufacturer/Subcontractor and union data to include:
 - (A) Name, address and telephone numbers of the manufacturer/subcontractor representative and Industrial Relations Representative to be contacted for further information;
 - (B) Union's name and local lodge number, if known.

If any of the required information is not available when providing the initial notice, indicate when it is estimated that such information can be provided.

- (b) The Contractor agrees to insert the substance of this Article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that, in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher-tier subcontractor or JPL, as the case may be, concerning the dispute.

ORDER OF PRECEDENCE [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.215-8 – 10/97]

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.

- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
 - (1) The Alterations Article.
 - (2) The GPs not altered.
 - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
 - (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule, and
 - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule,
 (c)(1) has order of precedence over (c)(2).
- (d) All provisions of this Contract which are required by their terms to be included in subcontracts shall be required by the Contractor to take precedence in the subcontract over any other provisions.

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 8/01] [FAR 52.247-64 – 6/97]

(This Article is applicable when the Contract or subcontract amount is expected to exceed \$100,000. This Article is not applicable for the acquisition of commercial items or commercial components.)

- (a) Except as provided in paragraph (b) below, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this Contract.
- (b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify JPL and request (i) authorization to ship in foreign-flag vessels or (ii) designation of available U.S.-flag vessels. If the Contractor is authorized in writing by JPL to ship the supplies in foreign-flag vessels, the Contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.
- (c) (1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Office of Cargo Preference, Maritime Administration (MAR-590) 400 Seventh Street, SW, Washington, D.C. 20590. Contractor and subcontractor bills of lading shall be submitted through JPL.
- (2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - (A) NASA shown as the sponsoring U.S. Government agency.
 - (B) Name of vessel.
 - (C) Vessel flag of registry.
 - (D) Date of loading.
 - (E) Port of loading.
 - (F) Port of final discharge.
 - (G) Description of commodity.
 - (H) Gross weight in pounds and cubic feet, if available.
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) For purchases over \$100,000, the Contractor shall insert the substance of this Article, including this paragraph (d), in all purchase orders and subcontracts under this Contract.
- (e) The requirement in paragraph (a) does not apply to:
 - (1) Purchases not exceeding \$100,000;

- (2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
 - (3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (5) Subcontracts for the acquisition of commercial items or commercial components.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Office of Costs and Rates, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590, Phone: 202-366-4610.

PREFERENCE FOR U.S.-FLAG AIR CARRIERS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.247-63 – 1/97]

(This Article does not apply to contracts or subcontracts for supplies, nonpersonal services, and construction that do not exceed \$100,000. This Article is not applicable to the acquisition of commercial items or commercial components.)

Incorporate by reference FAR 52.247-63, Preference for U.S.-Flag Air Carriers.

PRINTING AND DUPLICATING [CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI, A-E – 4/99] [NFS 1852.208-81 – 8/93]

(This Article does not apply unless this Contract requires the Contractor to provide printing or significant reproduction, i.e., in excess of 5,000 copies of a single page or in excess of 25,000 copies in the aggregate of multiple pages.)

- (a) NFS 1852.208-81, Restrictions on Printing and Duplicating (August 1993), is hereby incorporated into this Article in its entirety.

Note 1: The terms "documentation" referred to in paragraph (a), "printing" referred to in paragraph (b), and "production units" referred to in paragraph (c) of NFS 1852.208-81, Restrictions on Printing and Duplicating (August 1993), pertain solely to "Government publications." "Government publications" is defined as (i) reports intended primarily for internal use by the Government and (ii) reports or other materials of the type that the Government itself distributes to the public under an agency program. "Government publications" shall, unless subject to exemption under applicable regulations, be printed by or through the Government Printing Office, even though the distribution of these reports and materials may be effectuated by the Contractor for the Government.

Examples of documents which are "Government publications" include, but are not limited to: (i) publications released by the Contractor or a subcontractor to the public for the purpose of promoting NASA or a Government agency sponsor; (ii) deliverable final reports, but not interim drafts of such reports; (iii) deliverable review board presentations and conclusions in which a majority of the review board membership consists of Government representatives.

Examples of documents which are not "Government publications" include, but are not limited to: (i) publications for internal usage and communication by JPL or any contractor or a subcontractor such as JPL's or a contractor's Telephone Directory or JPL's or a contractor's internal newsletter; (ii) public information, education and public service documents, and award certificates printed for JPL's or a contractor's usage rather than Government usage, including those which may contain an incidental reference to sponsorship by NASA or another Government agency; (iii) publications for which the printing costs are not paid for by the Government; (iv) non-deliverable reports provided to the Government for informational purposes which are suitable for publication in academic, technical, or professional journals and similar publications; and (v) review board presentations and conclusions in which a majority of the formal review board membership consists of JPL, contractor, or subcontractor representatives, where Government attendance is only incidental, and the Contract does not expressly require Government approval of the proceedings.

- (b) To the extent that it applies to subcontractors, the Contractor will implement NASA Policy Guideline (NPG) 1490.5A, Procedural Guidance for Printing, Duplicating and Copying Management, dated July 1997, for all printing, duplicating, copying, forms and mail management related to the performance of this contract.

Note 2: Requests for waivers to permit commercial printers to print "Government publications" in cases of exigencies or other appropriate circumstances shall be submitted by the Contractor to the JPL negotiator for submission to the NASA Printing Management Officer through the Contracting Officer.

PROHIBITION OF CONTRACTOR USE OF PRIVATELY OWNED AIRCRAFT IN CONTRACT PERFORMANCE

[CT, FPNR&D, FPR&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

The Contractor, its employees, agents and subcontractors, shall not use privately owned (noncommercial) aircraft in the performance of this Contract without prior approval of JPL. Any request for approval to use privately owned aircraft must include a certificate of insurance as evidence that the Contractor has in effect Aircraft Liability Insurance coverage of not less than \$5,000,000 for all deaths, injuries and property damage arising from one accident or occurrence. The Contractor shall be required as a condition of JPL's approval to submit an endorsement naming the Institute as an additional insured in such aircraft liability insurance policy. The Contractor shall include this provision in any subcontract involving travel subject to JPL approval or requiring that the subcontractor utilize a privately owned (noncommercial) aircraft.

RELEASE OF INFORMATION [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]

(This Article does not apply if the Article entitled "Release of Information - Preliminary Engineering Report (PER)" is applicable.)

- (a) The Contractor agrees that all information released by the Contractor for publicity or promotional purposes (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL will be submitted to JPL for review for technical accuracy prior to issuance. (See enclosed form letter JPL 1737, "Release of Information.")
- (b) The Contractor agrees to insert this clause including this paragraph in all subcontracts.

REMOVAL OR REPLACEMENT OF PERSONNEL [LH/T&M, T&MC – 4/99]

JPL may at any time direct the Contractor to remove or replace personnel from the performance of the work hereunder and the Contractor shall forthwith comply with such direction. Any replacement shall be subject to the approval of JPL and, if Contractor personnel are listed by name in the Schedule, the name and classification and rate or rates per hour shall be added to this Contract by Supplemental Agreement.

REQUIRED NOTICES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99]

Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL under any provision of this Contract shall be directed to the JPL Negotiator or the Manager, Acquisition Division, JPL, or their authorized representatives.

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99]
[FAR 52.225-11 – 10/96]

Incorporate by reference FAR 52.225-11, Restrictions on Certain Foreign Purchases.

RESTRICTIONS ON SUBCONTRACTOR SALES [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, CREI – 4/99] [FAR 3.503, 52.203-6 – 7/95]

(This Article is applicable to contracts and subcontracts exceeding \$100,000 for other than commercial items.)

Incorporate by reference FAR 52.203-6, Restrictions on Subcontractor Sales.

RIGHTS IN DATA - GENERAL [CT, FP-NR&D, FP-R&D, LH/T&M, T&MC – 8/01] [FAR 52.227-14 – 6/87; NFS 1852.227-14 – 6/87]

(If the Article entitled "Existing Commercial Computer Software - Licensing" is applicable to this Contract, it shall apply in lieu of this Article regarding any acquisition of commercial computer software.)

(a) Definitions.

- (1) "Computer software," as used in this Article, means computer programs, computer data bases, and documentation thereof.
- (2) "Data," as used in this Article, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data, and computer software. The term does not include

information incidental to Contract administration, such as financial, administrative, cost or pricing, or management information.

- (3) "Form, fit, and function data," as used in this Article, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.
 - (4) "Institute" means the California Institute of Technology as a party to this Contract.
 - (5) "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. JPL's rights under this Contract are rights of the California Institute of Technology as a party to this Contract.
 - (6) "Limited rights," as used in this Article, means the rights of the Government, or in support and furtherance of its Government contract obligations, the Institute, in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this Article.
 - (7) "Limited rights data," as used in this Article, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.
 - (8) "Restricted computer software," as used in this Article, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.
 - (9) "Restricted rights," as used in this Article, means the rights of the Government, and in support and furtherance of its Government contract obligations, the Institute, in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this Article, or as otherwise may be provided in a collateral agreement incorporated in and made part of this Contract, including minor modifications of such computer software.
 - (10) "Technical data," as used in this Article, means data (other than computer software) which are of a scientific or technical nature.
 - (11) "Unlimited rights," as used in this Article, means the right of the Government, or in support and furtherance of its Government contract obligations, the Institute, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.
- (b) Allocation of Rights.
- (1) Except as provided in paragraph (c) of this Article regarding copyright, the Government and in support and furtherance of its Government contract obligations, the Institute, shall have unlimited rights in:
 - (A) Data first produced in the performance of this Contract;
 - (B) Form, fit, and function data delivered under this Contract;
 - (C) Data delivered under this Contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this Contract; and
 - (D) All other data delivered under this Contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this Article.
 - (2) The Contractor shall have the right to:
 - (A) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this Contract, unless provided otherwise in paragraph (d) of this Article;
 - (B) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this Article;

- (C) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this Article; and
 - (D) Establish claim to copyright subsisting in data first produced in the performance of this Contract to the extent provided in subparagraph (c)(1) of this Article.
- (c) Copyright.
- (1) Data First Produced in the Performance of This Contract.
 - (A) Unless provided otherwise in paragraph (d) of this Article, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this Contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer through JPL is required to establish claim to copyright subsisting in all other data first produced in the performance of this Contract.
 - (B) When claim to copyright is made, the Contractor shall affix the applicable copyright or notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including the Prime Contract number) to the data when such data are delivered to JPL, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. (Acknowledgment shall include a statement that "This work was performed for the Jet Propulsion Laboratory, California Institute of Technology, sponsored by the United States Government under a Prime Contract between the California Institute of Technology and NASA.")
 - (C) For data other than computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government.
 - (D) For computer software, the Contractor grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, and others acting on their behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.
 - (2) Data Not First Produced in the Performance of This Contract. The Contractor shall not, without prior written permission of JPL, incorporate in data delivered under this Contract any data not first produced in the performance of this Contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a license of the same scope as set forth in subparagraph (c)(1) of this Article; provided, however, that if such data are computer software, the Contractor grants to the Government and in support and furtherance of its Government contract obligations, the Institute, or acquires on their behalf, a paid-up nonexclusive irrevocable worldwide license as set forth in subparagraph (g)(3) of this Article.
 - (3) Removal of Copyright Notices. JPL agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.
- (d) Release, Publication and Use of Data.
- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data other than computer software first produced or specifically used by the Contractor in the performance of this Contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this Article or expressly set forth in this Contract.
 - (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this Contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by JPL.
 - (3) (A) The Contractor agrees not to establish claim to copyright or publish or release to others any computer software first produced in the performance of this Contract without the Contracting Officer's prior written permission.

(B) If the Government desires to obtain copyright in computer software first produced in the performance of this Contract for which permission to copyright has not been granted to the Contractor as set forth in subdivision (d)(3)(A) of this Article, the Contracting Officer or the Institute may direct the Contractor to assert, or authorize the assertion of, claim to copyright in said data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(C) Whenever the word "establish" is used in this clause, with reference to a claim to copyright, it shall be construed to mean "assert."

(e) Unauthorized Marking of Data.

(1) Notwithstanding any other provisions of this Contract concerning inspection or acceptance, if any data delivered under this Contract are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this Article and use of such is not authorized by this Article, or if such data bears any other restrictive or limiting markings not authorized by this Contract, JPL may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings:

(A) JPL shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(B) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer through JPL for good cause shown), the Government or JPL shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(C) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(A) of this Article, the Contracting Officer through JPL shall consider such written justification and determine whether or not the markings are to be canceled or ignored. If the Contracting Officer through JPL determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer through JPL determines, with concurrence of NASA, that the markings are not authorized, the Contracting Officer through JPL shall furnish the Contractor a written determination, which determination shall become the final Government decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government and JPL shall continue to abide by the markings under this subdivision (e)(1)(C) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government or JPL shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this Article may be modified in accordance with NASA regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) This paragraph (e) does not apply if this Contract is for a major system or for support of a major system by a civilian agency other than NASA and the U.S. Coast Guard agency subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949.

(4) (RESERVED)

(f) Omitted or Incorrect Markings.

(1) Data delivered to the Government or JPL without either the limited rights or restricted rights notice as authorized by paragraph (g) of this Article, or the copyright notice required by paragraph (c) of this Article, shall be deemed to have been furnished with unlimited rights, and the Government and the Institute assume no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government or JPL, the Contractor may request, within six months (or longer time approved by JPL for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and JPL may agree to do so if the Contractor:

(A) Identifies the data to which the omitted notice is to be applied;

- (B) Demonstrates that the omission of the notice was inadvertent;
- (C) Establishes that the use of the proposed notice is authorized; and
- (D) Acknowledges that the Government and the Institute have no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) JPL may also:

- (A) Permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or
- (B) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software.

- (1) When data other than that listed in subdivisions (b)(1)(A), (B), and (C) of this Article are specified to be delivered under this Contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to JPL under this Contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to JPL are to be treated as limited rights data and not restricted computer software.
- (2) Notwithstanding paragraph (g)(1) of this Article, the Contract may identify and specify the delivery of limited rights data, or JPL or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Institute and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under Government contract No. NAS7-1407 (and JPL subcontract No. _____). These data may be reproduced and used by the Institute or the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Institute or the Government; except that the Institute or the Government may disclose these data outside the Institute or the Government for the following purposes, if any, provided that the Institute or the Government makes such disclosure subject to prohibition against further use and disclosure:
 - (1) Use by support service contractors.
 - (2) (Reserved)
- (b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(end of notice)

- (3) (A) Notwithstanding paragraph (g)(1) of this Article, the Contract may identify and specify the delivery of restricted computer software, or JPL or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Institute and the Government will thereafter treat the computer software, subject to the provisions of paragraphs (e) and (f) of this Article, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

- (a) This computer software is submitted with restricted rights under Government contract No. NAS7-1407 (and JPL subcontract No. _____). It may not be used, reproduced, or disclosed by the Institute or the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the Contract.
- (b) This computer software may be:

- (1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Institute or Government installation to which such computer or computers may be transferred;
- (2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;
- (3) Reproduced for safekeeping (archives) or backup purposes;
- (4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;
- (5) Disclosed to and reproduced for use by support service contractors in accordance with subparagraphs (b)(1) through (4) of this Article, provided the Institute or the Government makes such disclosure or reproduction subject to these restricted rights; and
- (6) Used or copied for use in or transferred to a replacement computer.
- (c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Institute and the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article.
- (d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the Contract.
- (e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(end of notice)

- (B) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE - SHORT FORM

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. NAS7-1407 (and subcontract No. _____ with [name of subcontractor]).

(end of notice)

- (C) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Institute and the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this Article, unless the Contractor includes the following statement with such copyright notice: "Unpublished - rights reserved under the Copyright Laws of the United States."
- (h) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government and the Institute under this Contract. If a subcontractor refuses to accept terms affording the Government or the Institute such rights, the Contractor shall promptly bring such refusal to the attention of JPL and not proceed with subcontract award without further authorization.
- (i) Relationship to Patents. Nothing contained in this Article shall imply a license to the Government or the Institute under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government or the Institute.
- (j) Inspection of Data Withheld. The Contractor agrees, except as may be otherwise specified in this Contract for specific data items listed as not subject to this paragraph, that the Contracting Officer, an authorized representative, or JPL may, up to three years after acceptance of all items to be delivered under this Contract, inspect at the Contractor's facility any data withheld pursuant to subparagraph (g)(1) of this Article, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the first-tier subcontractor whose data are to be inspected

demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

RIGHTS IN TECHNICAL PROPOSAL DATA [CT, FP-NR&D, FP-R&D, LH/T&M, T&MC, CREI – 4/99] [FAR 52.227-23 – 6/87]

(This Article applies to contracts resulting from a proposal containing technical data. The Article does not cover rights to commercial or financial information contained in the successful proposal.)

It is agreed that as a condition of the award of this Contract, and notwithstanding the conditions of any notice appearing thereon, the Government and the Institute shall have the right to use, duplicate, and disclose, and have others so do, for any purpose whatsoever, the technical data contained in the proposals upon which this Contract and any future modifications are based.

SELECTION OF PERSONNEL [LH/T&M, T&MC – 4/99]

If Contractor personnel are not listed by name in the Schedule, the Contractor shall be responsible for selecting personnel who are well qualified to perform in the classifications listed, subject, however, to the initial and continuing approval of JPL.

SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (S/SD/WOSB PLAN) [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 8/01] [FAR 52.219-9 – 8/96]

(This Article is applicable if the basic contract or any separate modification exceeds \$500,000 [\$1,000,000 for construction], except it does not apply to contracts with small businesses or orders under GSA contracts. Work performed outside the United States is exempt from the requirements of this Article.)

- (a) If there will be any subcontracting under this Contract and the basic or any modification exceeds \$500,000, (\$1,000,000 for construction of any public facility), the Contractor agrees to submit for JPL approval a Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (Plan) and to provide a written update to the Plan for every modification exceeding \$500,000 (\$1,000,000 for construction of a public facility). JPL's approval will be based on the requirements in JPL form 0294 entitled "Requirements for a Subcontracting Plan." The approved Plan and approved updates will be deemed incorporated into this Contract.
- (b) If a Plan is required under this Contract, SF 294, "Subcontracting Report for Individual Contracts," and SF 295, "Summary Subcontract Report," are deliverables, which must be submitted by the Contractor to the JPL Negotiator in accordance with the instructions on the forms.
- (c) It is understood and agreed that the failure of the Contractor to comply in good faith with the Article of this Contract entitled "Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns," or with any Plan required to be included in this Contract, shall be a material breach of this Contract.

SUBCONTRACTS [LH/T&M, T&MC – 4/99] [FAR 52.243-3 - 8/87]

- (a) No subcontract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the prior written consent or approval of JPL.
- (b) No subcontract placed under this Contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement subcontracts shall not exceed the fee limitations in FAR 15.404-4.
- (c) Unless the consent or approval specifically provides otherwise, consent by JPL to any subcontract shall not constitute a determination (i) of the acceptability of any subcontract terms or conditions, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this Contract.

SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [FAR 52.244-6 – 10/95]

(a) Definition.

- (1) "Commercial item," as used in this Article, has the meaning contained in the "Definitions" Article and in FAR 52.202-1, "Definitions."
- (2) "Subcontract," as used in this Article, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this Contract.
- (c) Notwithstanding any other Article of this Contract except to the extent needed to satisfy the technical requirements and technical data (including software) deliverables under this Contract, the Contractor is not required to include any JPL provision or Article, other than those FAR provisions listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under Part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a)); and
 - (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- (d) The Contractor shall include the terms of this provision, including this paragraph (d), in subcontracts awarded under this Contract.

TERMINATION – LABOR-HOUR/TIME-AND-MATERIAL [LHT&M, T&MC – 4/99] [FAR 52.249-6, ALT. IV – 9/96]

- (a) JPL may terminate performance of work under this Contract in whole or, from time to time, in part, if:
 - (1) JPL determines that a termination is in the interest of the Institute or the Government.
 - (2) The Contractor defaults in performing this Contract and fails to cure the default within 10 days (unless extended by JPL) after receiving a JPL notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.
- (b) JPL shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Institute or the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Article of this Contract entitled "Excusable Delays," the rights and obligations of the parties will be the same as if the termination was for the convenience of the Institute or the Government.
- (c) After receipt of a Notice of Termination, and except as directed by JPL, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
 - (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this Article), except as necessary to complete the continued portion of the Contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to JPL, in the manner and to the extent directed by JPL, all right, title, and interest of the Contractor under the subcontracts terminated, in which case JPL shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by JPL, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this Contract; approval or ratification will be final for purposes of this Article.
 - (6) Transfer title (if not already transferred) and, as directed by JPL, deliver to JPL (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, (ii) the completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to JPL, and (iii) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this Contract, the cost of which the Contractor has been or will be reimbursed under this Contract.
 - (7) Complete performance of the work not terminated.

- (8) Take any action that may be necessary, or that JPL may direct, for the protection and preservation of the property related to this Contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by JPL, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, JPL. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Institute under this Contract, credited to the price or cost of the work, or paid in any other manner directed by JPL.
- (d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120 day period.
- (e) After expiration of the plant clearance period as defined in Subpart 45.6 of FAR and any corresponding implementing or supplementing provisions in the NFS, the Contractor may submit to JPL a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by JPL. The Contractor may request JPL to remove those items or enter into an agreement for their storage. Within 15 days, JPL will accept the items and remove them or enter into a storage agreement. JPL may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- (f) After termination, the Contractor shall submit a final termination settlement proposal to JPL in the form and with the certification prescribed by JPL. The Contractor shall submit the proposal promptly, but no later than six months from the effective date of termination, unless extended in writing by JPL upon written request of the Contractor within this six- month period. However, if JPL determines that the facts justify it, a termination settlement proposal may be received and acted on after six months or any extension. If the Contractor fails to submit the proposal within the time allowed, JPL may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- (g) Subject to paragraph (f) above, the Contractor and JPL may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The Contract shall be amended, and the Contractor paid the agreed amount.
- (h) If the Contractor and JPL fail to agree in whole or in part on the amount to be paid because of the termination of work, JPL shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount determined as follows:
 - (1) If the termination is for the convenience of the Institute, include:
 - (A) An amount for direct labor hours (as defined in the Schedule of the Contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;
 - (B) An amount (computed under the provisions for payment of materials or other direct costs) for material expenses or other direct costs incurred before the effective date of termination, not previously paid to the Contractor;
 - (C) An amount for labor and material expenses and other direct costs computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by JPL; however, the Contractor shall discontinue these expenses as rapidly as practicable;
 - (D) If not included in (A), (B), or (C) above, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - (E) The reasonable costs of settlement of the work terminated, including:
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

- (iii) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.
- (2) If the termination is for default of the Contractor, include the amounts computed under (1) above but omit:
 - (A) Any amount for preparation of the Contractor's termination settlement proposal; and
 - (B) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by JPL.
- (i) The cost principles and procedures in Part 31 of the FAR and any corresponding implementing or supplementing provisions in the NFS, in effect on the date of this Contract, shall govern all costs claimed, agreed to, or determined under this Article.
- (j) The determination by JPL of the amount, if any, due the Contractor by reason of the termination of this Contract, as provided in paragraphs (f) or (h) above or paragraph (k) below of this Article, shall not be final and conclusive with regard to the Contractor's right to pursue any available legal remedy in the event the Contractor disagrees with such determination, provided that, if the Contractor has failed to submit its claim within the time provided in paragraph (f) above, and has failed to request an extension of such time, the determination of JPL as to the amount due shall be final and conclusive.
- (k) In arriving at the amount due the Contractor under this Article, there shall be deducted:
 - (1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this Contract;
 - (2) Any claim which the Institute has against the Contractor under this Contract; and
 - (3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this Article and not recovered by or credited to the Institute.
- (l) If the termination is partial, the Contractor may file with the Institute a proposal for an equitable adjustment of the price(s) for the continued portion of the Contract. The Institute shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this Article shall be requested within 90 days from the effective date of termination, unless extended in writing by JPL.
- (m)
 - (1) The Institute may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the Contract, if the Institute believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Institute upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid to the Institute. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Institute because of the circumstances.

TIMEKEEPING AND PAYMENTS [LH/T&M, T&MC – 1/00] [FAR 52.232-7, ALT. I – 2/97]

- (a) General. The Contractor shall submit invoices to JPL as indicated in the Schedule and discussed below. Payment to the Contractor for hours worked by the Contractor employees listed in the Schedule (or Contract Work Order) (or if there is no listing of personnel by name in the Schedule, then by personnel of the classification listed in the Schedule) will be based on the actual hours worked by such personnel in accordance with paragraph (b) below. Reimbursement of the Contractor for travel and related expenses or allowances shall be allowable only if stated in the Schedule and shall be subject to the provisions below.
- (b) Timekeeping.
 - (1) For work to be performed for JPL at a JPL location, the Contractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time, whichever is later. Mealtime deductions shall be appropriately determined by the Contractor. The Contractor is responsible for establishing a process that monitors its personnel leaving JPL premises during the workday.

- (2) For work performed at a location other than JPL, the Contractor is responsible for accurately tracking and recording the hours and days of the workweek and the hours of the workshift that are worked by its employees. Unless otherwise provided for in this Contract, the Contractor shall maintain timekeeping records in accordance with form JPL 1725, "Minimum Timekeeping Requirements for Time-and-Material or Labor-Hour Type Procurements to be Performed at Off-Lab Facilities."
 - (3) Overtime is defined as work performed in excess of eight hours in one day or forty hours in one workweek or in accordance with applicable State and Federal Laws and Regulations.
- (c) Hourly Rate.
- (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule or Contract Work Order by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Working time will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated or approved shift starting time or the actual starting time. Meal time deductions will be as determined by the Contractor. At the end of the day, working time will not be computed beyond the end of the designated approved shift unless overtime is authorized. Invoices shall be submitted weekly, (unless another interval is specified in the Schedule) to the attention of the JPL Accounting Section. Invoices shall contain the accuracy representation as required by JPL, and shall be submitted by one of the authorized representatives specified in the Schedule. Promptly after receipt of each invoice, the Institute shall, except as otherwise provided in this Contract, and subject to the terms of (g) below, pay the invoice as approved by JPL.
 - (2) Unless otherwise prescribed in the Schedule, the Institute shall withhold five percent of the amounts due under this Contract, or such other amount which the Institute considers necessary to protect the interest of the Institute and the Government, but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (h) below.
 - (3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If the Schedule or Contract Work Order provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by JPL.
- (d) Materials, Subcontracts and Other Direct Costs.
- (1) Allowable costs of direct materials or other direct costs authorized in the Schedule shall be determined by JPL in accordance with Subpart 31.2 of FAR in effect on the date of this contract and any corresponding implementing or supplementing provisions in the NFS. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials and other direct costs in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of FAR and any corresponding implementing or supplementing provisions in the NFS. The Contractor shall be reimbursed for items and services purchased directly for the Contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services. Direct materials, as used in this Article, are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product. The Contract shall support all material or other direct costs claimed by submitting copies of paid invoices or storeroom requisitions, or by other substantiation acceptable to JPL.
 - (2) The cost of subcontracts that are authorized under the "Subcontracts" Article of this Contract shall be reimbursable costs under this Article; provided, that the costs are consistent with subparagraph (3) below. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the Contract under subparagraph (1) above; however, this requirement shall not apply to a Contractor that is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under (c)(1) above.
 - (3) To the extent able, the Contractor shall:

- (A) Obtain materials or other direct cost items at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (B) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify JPL and give the reason. Credit shall be given to the Institute for cash and trade discounts, rebates, allowances, credits, salvage, the value of any appreciable scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The benefits lost without fault or neglect on the part of the Contractor, or lost through fault of JPL, shall not be deducted from gross costs.
- (4) If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (d)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Institute or the Government; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.
- (e) Total Cost. It is estimated that the total cost to the Institute for the performance of this Contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this Contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material or other direct costs that will accrue in performing this Contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 75% of the ceiling price in the Schedule, the Contractor shall notify JPL, giving a revised estimate of the total price to the Institute for performing this Contract with supporting reasons and documentation. If at any time during performance of this Contract, the Contractor has reason to believe that the total price to the Institute for performing this Contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify JPL, giving a revised estimate of the total price for performing this Contract, with supporting reasons and documentation. If at any time during performance of this Contract, the Institute has reason to believe that the work to be required in performing this Contract will be substantially greater or less than the stated ceiling price, JPL will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the Contract.
- (f) Ceiling Price. The Institute shall not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until JPL shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this Contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material or other direct costs had been incurred after the increase in the ceiling price. Directions, orders, notices, requests and the like issued by JPL pursuant to the "Changes" Article or any other provision of this Contract shall not be considered an authorization to the Contractor to exceed the ceiling price set forth in the Schedule in the absence of a statement in a Unilateral Modification, or other Contract modification, increasing the ceiling price.
- (g) Audit. At any time before final payment under this Contract, JPL may audit or have audited the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by JPL not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this Contract (including, without limitation, terms relating to patents and terms of paragraphs (h) and (i) below), the Institute shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this Contract, but in no event later than six months (or such longer period as JPL may approve in writing) from the date of completion.
- (h) Release. The Contractor, and each assignee under an assignment entered into under this Contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Contract, a release discharging the Institute, its officers,

agents, and employees of and from all liabilities, obligations, and claims arising out of or under this Contract, subject only to the following exceptions:

- (1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.
 - (2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this Contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to JPL not more than six years after the date of the release or the date of any notice to the Contractor that the Institute is prepared to make final payment, whichever is earlier.
 - (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Institute or the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this Contract relating to patents.
- (i) **Refunds.** The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials or other direct costs portion of this Contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Institute. The Contractor and each assignee, under an assignment entered into under this Contract and in effect at the time of final payment under this Contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this Contract, an assignment to the Institute of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to JPL.

TOXIC CHEMICAL RELEASE REPORTING [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-14 – 10/96]

(This Article is applicable to all contracts where the value of the contract and all options at the time of award is expected to exceed \$100,000.)

By entering into this Contract, the Contractor agrees to abide by and accept all of the Terms and Conditions found in the Federal Acquisition Regulations (FAR) at 52.223-14.

TRANSFER OF TECHNICAL DATA UNDER SPACE STATION INTERNATIONAL AGREEMENTS [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 8/01] [NFS 1852.227-87 – 4/89]

(This Article applies to contracts and subcontracts in support of Space Station program activities that may involve transfer of technical data subject to the International Traffic in Arms Regulations, 22 CFR parts 120 through 130, or the Export Administration Regulations (EAR), 15 CFR PARTS 730-799 in accordance with the NASA Export Control Program.)

- (a) In the cooperative Space Station Freedom Program, NASA has the authority to provide to the international partners all information necessary to implement the multilateral Space Station Intergovernmental Agreement and the Space Station Memoranda of Understanding. NASA is committed under these Space Station agreements to provide its international Space Station partners with certain technical data which are subject to the U.S. export control laws and regulations. NASA will have obtained any necessary approvals from the Department of State for the transfer of any such technical data. Space Station contractors, acting as agents of NASA under the specific written direction of the Contracting Officer, or designated representative, require no other separate approval under the International Traffic in Arms Regulations (ITAR).
- (b) The Contractor agrees, when specifically directed in writing by the JPL Negotiator or an authorized JPL representative under this Contract, acting upon the written direction of the NASA Contracting Officer or designated representative, to transfer identified technical data to a named foreign recipient, in the manner directed. No export control marking should be affixed to the data unless so directed. If directed, the text of the marking to be affixed will be furnished by NASA through the JPL Negotiator or an authorized JPL representative under this Contract.
- (c) It should be emphasized that the transfer is limited solely to those technical data which NASA specifically identifies and directs the Contractor to transfer in accordance with paragraph (b), above, and that all other transfers of technical data to foreign entities are subject to the requirements of the U.S. export control laws and regulations.
- (d) Nothing contained in this Article affects the allocation of technical data rights between NASA and the Contractor or any subcontractors as set forth in the "Rights in Data" Article of this Contract, nor the protection

of any proprietary technical data which may be available to the Contractor or any subcontractor under that Article.

- (e) The Contractor agrees to include this Article, including this paragraph (e), in all subcontracts hereunder, appropriately modified to reflect the relationship of the parties.

UNION DATA FOR ON-SITE CONTRACTORS [CT, FP-NR&D, FP-R&D, T&MC, LH-T&M – 2/00]

(This Article applies [i] to any time-and-material or labor-hour contract where the work is performed at a JPL-controlled facility and [ii] to any other contract for which any contractor personnel work in residence at a JPL-controlled facility. Work performed outside the United States is exempt from the requirements of this Article.)

The Contractor shall provide JPL-requested union information, including union information pertaining to its Subcontractors, if any, on the "Request for Union Data Regarding On-Site Contractors and Their Subcontractors," set forth below. A copy of this form (sample shown below), filled in, shall be returned to the cognizant negotiator's attention. Any changes in the data, such as the addition of a new union subcontractor, shall be provided to JPL through timely resubmission of the following form:

REQUEST FOR UNION DATA REGARDING ON-SITE CONTRACTORS AND THEIR SUBCONTRACTORS

1. Date:
2. Contract number:
3. Scheduled Contract completion date:
4. Contractor name:
5. Total number of on-site personnel:
6. Cognizant Negotiator:
7. Subcontractors under this Contract with union personnel working on-site at JPL-controlled facilities.

Number of Subcontractor Personnel at JPL Site:

- | <u>Subcontractor</u> | <u>Total Personnel</u> | <u>No. of Union Personnel</u> |
|---|------------------------|-------------------------------|
| 8. Brief description of scope of work and location of work site sufficient to locate the union contract and subcontract workers. | | |
| 9. a. Local union name: Local No. (if any): | | |
| b. Number of on-site Contractor/subcontractor personnel represented: | | |
| c. Name, phone number and address of business agent representing the local union: | | |
| (1) Name: | | |
| (2) Phone: | | |
| (3) Address: | | |
| d. Expiration date of labor agreement: | | |
| e. (1) If applicable, the employer association responsible for negotiating each agreement for Contractor/subcontractor: | | |
| (2) If applicable, the names of Contractor's/subcontractor's local employer representatives who take part in such negotiations: | | |
| 10. Name, phone number and address of the Contractor's subcontractor's representative who is responsible for handling labor relations/human resources issues: | | |
| a. Name: | | |
| b. Phone: | | |
| c. Address: | | |

(Note: For items 8., 9., and 10., provide for each union and also for each on-site subcontract, as applicable.)

(Work performed outside the United States is exempt from the requirements of this Article.)

Incorporate by reference NFS 1852.219-74, Use of Rural Area Small Businesses.

UTILIZATION OF SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS CONCERNS

[CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.219-8 – 6/97]

(This Article is applicable when the Contract amount is expected to be over \$100,000, unless (i) a personal services contract is contemplated, (ii) a commercial items or services contract, or (iii) the Contract together with all its subcontracts is to be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.)

Incorporate by reference FAR 52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Businesses.

YEAR 2000 COMPLIANCE REQUIREMENT - NEW WORK [CT, FP-NR&D, FP-R&D, T&MC, LH/T&M, FPC, CREI, A-E – 4/99] [PIC 98-8 - 5/21/98]

(This provision is not applicable to contracts \$2,500 or less.)

The Statement of Work includes the following performance requirements:

- (a) **Definition.** “Year 2000 compliant,” as used in this provision, means that the information technology (hardware, software and firmware, including embedded systems or any other electro-mechanical or processor-based systems used in accordance with its associated documentation) accurately processes date and date-related data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, and, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date and date-related data with it.
- (b) (1) Any information technology provided, operated and/or maintained under this Contract is required to be Year 2000 compliant. To ensure this result, the Contractor shall provide documentation describing how the IT items or services demonstrate Year 2000 compliance, consisting of standard product literature or test reports for commercial items, test procedures, or other documentation, if any, otherwise specifically required in paragraph (b)(2).
- (2) (RESERVED)
- (c) The Contractor warrants that any IT items or services provided under this Contract that involve the processing of date and date-related data are Year 2000 compliant. If the Contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system.
- (d) The remedies available under this warranty shall include repair or replacement, at no additional cost to JPL (or if this is a cost-reimbursement contract, at no additional fee to JPL) and the Government, of any provided items or services whose non-compliance is discovered and made known to the Contractor in writing within 90 days after acceptance. In addition, all the other terms and limitations of the Contractor's standard commercial warranty or warranties shall be available to JPL for the IT items or services acquired under this Contract. Nothing in this warranty shall be construed to limit any rights or remedies JPL may otherwise have under this Contract with respect to defects other than Year 2000 performance.
- (e) (RESERVED)



MINIMUM TIMEKEEPING REQUIREMENTS FOR LABOR-HOUR TYPE PROCUREMENTS TO BE PERFORMED AT OFF-LAB FACILITIES

- A. For individuals operating as independent contractors with no employees and no plans to hire employees, and where the subject JPL Contract is the individual's only contract, the Contractor must maintain a weekly record of time expended in performance of the JPL Contract.
- B. For individuals with more than one contract, or contractors who have employees or who are contemplating hiring employees, the following payroll practices apply:
 - 1. Maintain records in compliance with 29 CFR 516.2(a), (b), and (c). (See page 2 of this form.)
 - 2. Maintain accountability for withholding and payment of all legally required payroll-related liabilities.
 - 3. Maintain an internal control system that protects the integrity of the payroll system.
 - 4. Maintain an accounting system that has the capability to segregate labor hours and resultant costs by contract and by job or work order when appropriate.
 - 5. In accordance with terms of the Article entitled "Timekeeping and Payments" (paragraph (g)) and the Article entitled "Audit and Examination of Records - Negotiation," JPL may make or cause to be made an audit of any or all of the above-described records.
- C. The above practices do not apply to consultants or second-tier independent contract labor services procured by contractors. Consultants and second-tier independent contractors are not considered to be employees of the Contractor. If the Contract authorizes such services, these charges must be clearly defined on invoices as consultant, subcontractor, or other direct charges and not as employees. This distinction must be made on all other applicable Contract and Contract-related documents as well.
- D. By acceptance of this Contract, the Contractor certifies that its timekeeping practices meet JPL requirements.

29 CFR 516.2

Employees subject to minimum wage or minimum and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Fair Labor Standards Act, hereafter referred to as the Act.

(a) **Items Required.** Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

- (1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records.
- (2) Home address, including zip code.
- (3) Date of birth, if under 19.
- (4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss, or Ms.). (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR Part 1620.)
- (5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a work force or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice.
- (6)
 - (i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act;
 - (ii) Explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis; and
 - (iii) The amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data).
- (7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours, and a "workweek" is any fixed and regularly recurring period of seven consecutive workdays).
- (8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation.
- (9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under paragraph (a)(8) of this section.
- (10) Total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions.
- (11) Total wages paid each pay period.
- (12) Date of payment and the pay period covered by payment.

(b) **Records of Retroactive Payment of Wages.** Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act shall:

- (1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.
- (2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour division, and:
 - (i) Preserve a copy as part of the records;
 - (ii) Deliver a copy to the employee; and
 - (iii) File the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) **Employees Working on Fixed Schedules.** With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also:

- (1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement, or other method that such hours were in fact actually worked by him; and
- (2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

RELEASE OF INFORMATION

This Contract with the Jet Propulsion Laboratory (JPL) constitutes a subcontract under a prime contract between the California Institute of Technology and the National Aeronautics and Space Administration (NASA). It is NASA's policy to provide the widest practical dissemination of information on all of its activities. Since 90% of NASA's research and development effort is performed by private industry, contractors and subcontractors have played a large role in this process.

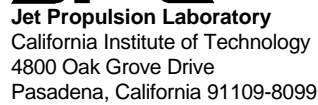
In accordance with this policy, the Contractor may want to issue press releases or plan publicity and advertising from time to time, and the Contractor will be expected to respond to queries from information media.

Close coordination in all of these matters is required, and JPL requires that all materials (e.g., news and photo releases, exhibit copy, motion picture scripts, advertising copy) directly related to the Contractor's work with and for JPL be reviewed by JPL for technical accuracy prior to issuance or use.

To expedite this review, the Contractor shall send the materials to the JPL Media Relations Office, mail stop 186-120, stating the Contractor's deadlines and referencing this Contract number.

In the event this Contract is a cost-reimbursement type contract, review by JPL shall not constitute approval for reimbursement of expenditures made in connection with publicity or advertising releases. Any such expenditures remain subject to applicable cost principles.

Nothing contained herein shall be deemed to change existing requirements relating to the release of classified information.



AFFILIATE ACCESS REQUEST

Before a JPL Affiliate Badge can be issued to an affiliate for access to JPL facilities, this form must be completed by the person requiring access and submitted to JPL Security and Protective Services (M/S 310-129).

To allow for security processing, this form must be submitted at least 24 hours before the required access to JPL premises by the affiliate.

- | | Yes | No |
|--|--------------------------|--------------------------|
| 1. Have you ever been convicted of a felony? | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Have you ever been convicted of a misdemeanor which resulted in imprisonment? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you answered "Yes" to any of the above questions, please state the date, place, and circumstances. A conviction will not necessarily disqualify you from access to JPL premises. If you need additional space, please attach another sheet of paper. | | |

[illegible]

I certify that answers given herein are true and complete to the best of my knowledge, and I authorize investigation of all statements contained herein. I understand that misrepresentation or omission of facts could result in withdrawal or denial of access to JPL.

Date Signed _____

Required Access Date

Signature of Affiliate Requesting Access

Printed Name of Affiliate Requesting Access

Printed Name of Affiliate Sponsor

NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



CERTIFICATIONS

(NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

I. CERTIFICATION OF NONSEGREGATED FACILITIES

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise.
- (b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) By submission of the offer, the offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will:
 - (1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain such certifications in its files; and
 - (3) Forward this certification and the following notice to the proposed subcontractors:

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

A Certificate of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontractor for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

- (d) By commencing performance of the Contract work, the selected contractor certifies to the Nonsegregated Facilities provisions above.

II. CERTIFICATION OF ANTI-KICKBACK COMPLIANCE

(A Certification of Anti-Kickback Compliance must be submitted prior to award.)

By submission of an offer, the offeror certifies that it has read the General Provision entitled "Anti-Kickback Procedures," contained in the solicitation and that neither it nor any of its employees has performed or participated in any prohibited actions, as defined in that provision, relating to the award of the Contract. By commencing performance of the Contract work, the selected contractor certifies to Anti-Kickback Compliance.

III. CERTIFICATION OF AMERICANS WITH DISABILITIES ACT COMPLIANCE

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it complies with the Americans with Disabilities Act, 42 U.S.C., 12101 et. seq., and will maintain compliance throughout the life of this Contract. By commencing performance of the Contract work, the selected contractor certifies to the Americans with Disabilities Act compliance.

IV. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(The following certification applies to all offers and awards in excess of \$100,000.)

- (a) The definitions and prohibitions contained in the General Provision Article "Limitation on Payments to Influence Certain Federal Transactions" are hereby incorporated by reference in paragraph (b) of this Certification.
- (b) By submission of an offer, the offeror certifies to the best of his or her knowledge and belief that on or after December 23, 1989:
 - (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the Offeror shall complete and submit, with its offer, OMB Standard Form LLL, "Disclosure of Lobbying Activities," to the JPL Contract Negotiator; and
 - (3) He or she will include the language of this Certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to civil penalty of not less than \$20,000 and not more than \$100,000, for each such failure.

V. CERTIFICATION OF FULL DISCLOSURE BY THE CONTRACTOR/OFFEROR REGARDING WHETHER IT ANTICIPATES BEING OR IS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT BY THE U.S. FEDERAL GOVERNMENT AT TIME OF AWARD

(This certification applies to contracts with a contract value exceeding \$25,000.)

- (a) By submission of an offer, the offeror certifies that it has provided full disclosure in writing to JPL whether as of the anticipated time of award of any contract resulting from the solicitation, it anticipates that it or its principals will be debarred, suspended, or proposed for debarment by the U.S. Federal Government.
- (b) By commencing performance of the Contract work, the selected contractor certifies that it has made full disclosure to JPL in writing as to whether as of the time of award it or any of its principals is debarred, suspended, or proposed for debarment by the U. S. Federal Government. (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs).

VI. CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

(This certification is required prior to award of a contract with an estimated value, including any options, over \$100,000.)

- (a) Submission of this certification is a prerequisite for making or entering into this Contract imposed by Executive Order 12969, August 8, 1995.
- (b) By submission of an offer, the offeror certifies that it has accepted and certifies to all the Terms and Conditions found in the Federal Acquisition Regulation (FAR) at 52.223-13.

VII. CERTIFICATION REGARDING CONTRACTOR REPRESENTATION BY FORMER CALTECH/JPL EMPLOYEES

(The Contractor represents and certifies the following as part of its offer.)

By submission of an offer, the offeror certifies that it has no previous JPL or Caltech employee involved in this procurement who has been gone from JPL for less than one year, who participated personally and substantially in the subject matter while working for JPL or Caltech, who was officially responsible for the subject matter while working for JPL or Caltech, and who owns or represents the proposer's organization.



ASBESTOS NOTIFICATION

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and contractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of contractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.